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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,997	07/03/2003	Chih-I Lin	LINC3176/EM	3391
23364	7590	02/24/2005	EXAMINER	
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			MENDOZA, MICHAEL G	
		ART UNIT	PAPER NUMBER	
		3731		

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/611,997	LIN ET AL. <i>C</i>
	<b>Examiner</b>	<b>Art Unit</b>
	Michael G. Mendoza	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. As to claim 13, it is unclear to which claim 13 depends off of.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
5. Claims 1, 2, 4-6, 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich 5549679.
6. Kuslich teaches an device for anchoring a tissue to a bone, the device comprising: an implant made of a flexible wall and provided with a holding portion 44 and an injection port 48 in communication with the holding portion, with the holding portion being enclosed by the flexible wall which is provided with a plurality of pores (see figures); one or more sutures fastened with the implant (fig. 19); a pasty medicine (col. 9, lines 55-60, and col. 10, lines 26-28) capable of solidification injected into the holding portion. It should be noted that Kuslich fails to teach wherein the plurality of

pores has a diameter smaller than 0.1 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to you the limitation as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

7. Kuslich teaches the device as defined in claim 1, wherein the flexible wall of the implant is of a one-layered construction (see figs.); wherein the sutures are fastened at one end with the implant (fig. 19); wherein the injection port of the implant is provided with a suture hole for holding the sutures (fig. 19); wherein the implant is provided with an imaging body of metal conductor or graphite (col. 7, lines 47-48); wherein the implant is integrally made of the flexible wall such that the implant takes the form of sac, bag, or ball (see figs.); an injection tool comprising a connection tube (figs. 30-36), a syringe formed of a barrel 90 and a plunger 96; and a sleeve receiving the connection tube and the implant (fig. 30).

8. Claims 3, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisermann et al. 6827743.

9. Kuslich teaches the device as defined in claim 1. It should be noted that Kuslich fails to teach wherein the flexible wall of the implant is of a laminated multi-layered construction.

10. Eisermann et al. teaches a device with a common multi-layered construction for aiding in bone growth. Therefore it would have been obvious to one having ordinary

skill in the art at the time the invention was made to use the multiply layers of Eisermann et al. to encourage bone growth (col. 2, lines 34-47).

11. As to claims 7 and 8, Kuslich/Eisermann teaches wherein the pasty medicine is a mixture of liquid and bone cement (col. 9, lines 55-60, and col. 10, lines 26-28, '679); wherein the bone cement is selected from the group of gypsum, calcium sulfate, calcium phosphate, poly(methylmethacrylate) and hydroxyl apatite (col. 2, line 65-col. 3, line 4, '743).

***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (571) 272-4694. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MM

MM

  
GLENN K. DAWSON  
PRIMARY EXAMINER